

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Ferrante
119019

FILE: B-204385

DATE: July 22, 1982

MATTER OF: Amray, Inc.

DIGEST:

Protest that sole-source procurement was improper because protester also can meet agency's needs is untimely under Bid Protest Procedures where filed after closing date for receipt of sole-source proposal.

Amray, Inc., protests the proposed award of a sole-source procurement by the National Aeronautics and Space Administration (NASA) for a scanning electron microscope under request for proposals (RFP) No. 8-2-1-21-25133-01. Amray contends that a sole-source procurement is improper because it can supply an item to meet NASA's needs. We dismiss the protest as untimely, following consideration of submitted materials by the parties on this issue through May 1982.

By synopsis in the Commerce Business Daily on July 15, 1981, NASA announced that, under the above RFP, it would negotiate with Cambridge Instrument Co. for a scanning electron microscope, the Cambridge Steroscan 250, with accessories, and that the closing date for receipt of the sole-source proposal was July 27, 1981. Four days prior to the closing date, an Amray representative visited the contracting officer for information on the procurement.

NASA argues that Amray's protest, filed here on August 12, 1981, is untimely because Amray's basis for protest, that it was unable to compete for the requirement because of the announced sole-source intention, was an apparent impropriety in the solicitation required to be protested before the closing date, July 27, 1981. Amray states that it did not read the synopsis until July 20, 1981. The protester alleges that it did not become aware that

a basis for protest existed until August 4, 1981, following receipt of the solicitation on the closing date and informal inquiries of NASA and others; then it promptly protested to NASA by telex on that date. The record contains conflicting assertions by Amray and NASA concerning Amray's awareness from the synopsis and meeting with the contracting officer of exactly what NASA intended to purchase and the reasons for the sole source.

The record is clear that Amray had actual knowledge of its exclusion from competing for the contract and the intended sole-source acquisition from the preclosing date synopsis and meeting. Even if Amray did not have actual knowledge of the solicitation, publication of a procurement synopsis in the Commerce Business Daily constitutes constructive notice of the solicitation and its contents. Furthermore, Amray states that, at the conclusion of the preclosing date meeting, its representative "clearly stated 'it is the intention of my company to protest.'" In view of this, Amray's basis for protest was apparent to Amray prior to the closing date for receipt of proposals. Since the protest was not filed with NASA or our Office prior to the closing date, it is untimely. 4 C.F.R. § 21.2(b)(1) (1982); Paulmar, Inc., B-207321, May 27, 1982, 82-1 CPD 503. Even if Amray's stated preclosing date intention to protest was a protest to NASA, the failure to protest here within 10 working days after the closing date (initial adverse agency action) makes the protest here untimely. 4 C.F.R. § 21.2(a) (1982).

We dismiss Amray's protest.

F. H. Barclay, Jr.
For Harry R. Van Cleve
Acting General Counsel